

**Before the
Federal Communications Commission
Washington, DC**

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| In the Matter of |) | |
| |) | |
| Request for Waiver and Review of the Decision of |) | CC Docket No. 02-6 |
| the Universal Service Administrator by |) | |
| |) | |
| South Valley Prep School |) | |
| Albuquerque, NM |) | SLD File Nos. 816149 |
| |) | |
| Schools and Libraries Universal Service |) | |
| Support Mechanism |) | |

REQUEST FOR WAIVER AND REVIEW

South Valley Prep School (“School”) hereby requests that the Commission review and reverse the decision of the Universal Service Fund Administrator (“USAC”) in its Form 486 Notification letter, dated October 2, 2012¹, to reduce School’s Funding Year 2011 Funding Request Number 2221131 because of a late-filed Form 486. In the alternative, the School requests that the Commission waive its rules and direct USAC to restore funding, in full, to the FRN in issue and, additionally, to waive any other procedural rules that may be necessary to effectuate the Commission’s Order.

The facts warrant a waiver of USAC’s Form 486 deadline rules because, among other things, the procedural rules that apply to the Form 486 process are extremely confusing, as the numerous Form 486-related cases that have come before the Commission clearly show. The combination of this being the School’s first year participating in the program and more responsibilities being assigned to the School’s inexperienced E-rate Reimbursement Coordinator only added to the confusion. Moreover, the School did in fact prepare and file the requisite forms, albeit late, and comply with E-rate program rules in all other respects.

¹ See ‘Exhibit A’

FACTS

Funding Year 2011 was the School's first year participating in the E-rate program, and, everyone was excited about the financial assistance the program would provide. The School's staff was inexperienced, however, with program rules.

The School received its first Funding Commitment for Funding Request Number 2221402 on June 24, 2011. The School promptly made the CIPA certifications and submitted the Form 486 to USAC. The Form 486 was processed on November 8, 2011 and the service start date was set to July 1, 2011.²

Subsequently, the School was issued a Funding Commitment Decision Letter on January 18, 2012 for its remaining FRN. This set the deadline to file the Form 486 for the School's FRN 2221131 to be May 17, 2012. However, the School did not realize that a separate Form 486 must be filed for this FRN as well. For this reason, the School, unknowingly, failed to submit the Form 486 in a timely manner.

On August 24, 2012, upon realizing just how complex the E-rate program actually was, the School sought outside help. It was then that the School learned that it had failed to timely submit the Form 486 for FRN 2221131. The School promptly filed the Funding Year 2011 Form 486 on August 27, 2012. The School received notification that the Form had been processed by USAC on October 2, 2012.

Due to the late filing, the funding request was reduce from \$7,516.80 to \$1,879.20. The reduction of the funding request is due to the Service Start Date being processed by USAC as April 29, 2012, rather than the submitted Service Start Date of July 1, 2011.

ISSUE – Request for Waiver

WHETHER THE CIRCUMSTANCES SURROUNDING THE LATE FORM 486 RE-FILING MAKE STRICT COMPLIANCE WITH USAC'S PROCEDURAL RULES INCONSISTENT WITH THE PUBLIC INTEREST.

² See 'Exhibit B'

DISCUSSION

Strict Compliance With The Rules Would Be Inconsistent With The Public Interest Because, Among Other Things, The Form 486 Filing Deadline Rules Are Procedural And Extremely Confusing.

The Commission may waive any provision of its rules for good cause shown.³ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁶

For numerous applicants, like the School here, the Form 486 process has proved especially vexing, resulting in late or missed filings, along with the resultant loss or reduction in funding.⁷ When those matters have come before the Commission, it has been extremely sensitive to the difficulties involved in and the confusing nature of the process, and the realities with which applicants must deal everyday as they do their best to abide by the program's many and complex rules. Indeed, in this regard, the Commission has made it a point to note that "the primary jobs of most of the people filling out these forms include school administrators, technology coordinators, and teachers, as opposed to staff dedicated to pursuing federal grants..."⁸ Thus, the Commission has found repeatedly, not only in cases similar to this one but also in others where the case for waiver was far less compelling, that waiver of the Form 486 deadline is warranted where: (1) staff mistakes or circumstances beyond the applicant's control led to the applicant's Form 486 filing

³ 47 C.F.R. §1.3.

⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), affirmed by *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

⁶ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

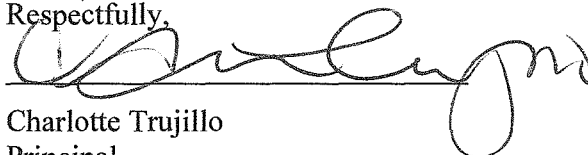
⁷ See *Request for Review of the Decision of the Universal Service Administrator by Annette Island School District, et al, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-746414, et al., CC Docket No. 02-6 (Wireline Comp. Bur. 2012) (granting 14 appeals after finding good cause to waive the deadline for filing FCC Form 486); *Request for Review of the Decision of the Universal Service Administrator by Children of Peace School, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-469413, et al., CC Docket No. 02-6 (Wireline Comp. Bur. 2010), (*Children of Peace School*).

⁸ *Ibid* at para. 7

problem, (2) there was no evidence of waste, fraud or abuse, and (3) the applicant had otherwise adhered to the program's core requirements.⁹

Finally, inasmuch as the School's Form 486 violation is not a substantive violation, but rather, a violation of one of USAC's procedural deadlines, and the Commission has granted waivers both in similar and less compelling cases,¹⁰ the School respectfully requests that the Commission (1) waive USAC's procedural rules and direct USAC to restore funding in full to all of the funding requests in issue; and (2) instruct USAC to waive any other of its procedural rules that may be necessary to effectuate the Commission's Order.

Respectfully,



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⁹ See, e.g., *Annette Island School District, supra*; *Requests for Review and Waiver of the Decisions of the Universal Service Administrator by Albertville City Schools, et al.*, Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-739495, et al., CC Docket No. 02-6, Order, 27 FCC Rcd 6094 (Wireline Comp. Bur. 2012) (granting 12 appeals after finding good cause to waive the deadline for filing FCC Form 486); *Children of Peace School, supra*; *Request for Review of the Decision of the Universal Service Administrator by Alaska Gateway School District, Tok, AK, et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 10182 (Wireline Comp. Bur. 2006) (granting 128 appeals after finding good cause to waive the deadline for filing FCC Form 486).

¹⁰ See *Children of Peace School* at n. 17 (Form 486 deadline waivers granted where applicants claimed: staff changes affected filing; new staff and confusing rules resulted in the late filed Form 486; superintendent, now placed on administrative leave, did not properly ensure all E-rate documents were filed on time; staff changes affected filing; E-rate staffer, now retired, did not properly ensure all E-rate documents were filed on time; consultant previously assisting the school with E-rate filings was confused about the rules; the form 486 was late due to a recent change in contact information; it failed to timely file the Form 486 due to confusion over program rules; the Form 486 was filed late due to new staff having no recent experience with E-rate; new staff and confusion resulted in the Form 486 being filed late; the staffer was inexperienced; it thought it filed the Form 486 electronically but later found that it was not submitted; staff changes affected filing; it never received the Urgent Reminder letter sent by USAC; due to an unexpected change in administrative procedures at the school district, a series of ministerial and procedural errors occurred and caused a breakdown in the flow of FCC paperwork; confusing rules affected filing; personnel issues caused the Form 486 to be filed late; Form 486 was not filed because of administrative changes and a new E-rate staffer who was unfamiliar with E-rate.)